

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
SOUTHERN DIVISION**

SCOTTY DALE PIERCE

PLAINTIFF

VERSUS

CIVIL ACTION NO. 1:08-cv-317-HSO-JMR

SHERIFF DAVID ALLISON

DEFENDANT

**MEMORANDUM OPINION AND ORDER OVERRULING OBJECTION
AND ADOPTING REPORT AND RECOMMENDATIONS**

This matter is before the Court on Plaintiff's Objection [44] to Chief Magistrate Judge John M. Roper's Report and Recommendations [43]. Judge Roper reviewed Defendant's Motion to Dismiss, or in the Alternative, for Summary Judgment and Qualified Immunity [38], and related pleadings. Judge Roper determined that Defendants's Motion for Summary Judgment [38] should be granted, and that Plaintiff's official and individual capacity claims should be dismissed with prejudice. *See* Report and Recommendations, at p. 17.

I. DISCUSSION

Because Plaintiff has filed an Objection to the Magistrate's proposed findings and recommendations, the Court applies a *de novo* standard of review. *See* 28 U.S.C. § 636(b)(1). Based on this review, the Court finds that the Magistrate Judge's Report and Recommendations are well reasoned, and that they correctly find the applicable facts and apply the governing legal standards. Plaintiff has failed to exhaust administrative remedies, as required by the Prison Litigation Reform Act. *See* 42 U.S.C. § 1997e. However, even assuming Plaintiff did lodge

grievances and exhausted his remedies, as he alleges in his Objection, after reviewing the record and Plaintiff's claims against Defendant, the Court agrees with the Magistrate's conclusion that Defendant is nevertheless entitled to summary judgment on Plaintiff's claims against him in both his official and individual capacities.

II. CONCLUSION

For the reasons stated herein, after thoroughly reviewing the findings in the Report and Recommendations, in addition to the positions advanced in Plaintiff's Objection [44], the Court finds that Plaintiff's Objection should be overruled, and that the Magistrate's Report and Recommendations entered on March 16, 2010, should be adopted as the findings of the Court.

IT IS, THEREFORE, ORDERED AND ADJUDGED that, Plaintiff's Objection [44] filed in this cause on March 22, 2010, should be, and hereby is, **OVERRULED**.

IT IS, FURTHER, ORDERED AND ADJUDGED that, the Report and Recommendations [43] of Chief Magistrate Judge John M. Roper entered on March 16, 2010, should be, and hereby are, adopted in their entirety as the findings of this Court.

IT IS, FURTHER, ORDERED AND ADJUDGED that, Defendant's Motion for Summary Judgment [38] should be, and hereby is, **GRANTED**, and this civil action is hereby **DISMISSED WITH PREJUDICE**. A separate judgment will

be entered in accordance with this Order as required by Federal Rule of Civil Procedure 58.

SO ORDERED AND ADJUDGED, this the 14th day of May, 2010.

s/ Halil Suleyman Ozerden

HALIL SULEYMAN OZERDEN
UNITED STATES DISTRICT JUDGE